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## Religion, Church, and State in the Post-Communist Era: The Case of Ukraine (with Special References to Orthodoxy and Human Rights Issues)

*Victor Yelensky\**

### I. RELIGION, CHURCH, AND STATE IN UKRAINE ON THE EVE OF THE FALL OF COMMUNISM

#### *A. Communist Religious Policy*

Up to the beginning of Gorbachev's reforms in Ukraine,<sup>1</sup> there were over six thousand officially functioning religious communities (one-third of the religious organizations in the Soviet Union). This number included four thousand Orthodox parishes (65% of the religious communities in Ukraine), more than eleven hundred communities of Evangelical Christian-Baptists, about one hundred communities of Roman Catholics, and eighty communities of the Church of Reformation of Trans-Carpathian's Hungarians and others.

The "Regulations Concerning the Religious Organizations in the Ukrainian SSR" defined the legal basis for the activity of religious organizations in the Ukrainian Soviet Socialist Republic.<sup>2</sup> This law, which mainly reproduced the Stalinist legislation of 1929, was issued in 1976. In addition, a great number of special instructions existed that led to an even more severe attitude towards churches. The violation of the minimal set of rights granted to believers was an ordinary phenomenon.

The number of official church institutions in no way reflected the real religious needs of the Ukrainian population. The authorities artificially restrained the increase of church institutions; the Communist party and state organizations concentrated their efforts on reducing

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1. The Ukraine is a Soviet Republic with a population of fifty-two million.

2. Regulations Concerning the Religious Organizations in the Ukrainian SSR (1976).

the religious activity of the population, setting up harsh and comprehensive control over the church, and limiting the church's functions to only ritual practice.<sup>3</sup>

Most religious communities in Ukraine worked unofficially.<sup>4</sup> In fact, the Ukrainian Greek Catholic Church existed underground, where despite difficult conditions it managed to preserve its bishops, monks, clerics, and continuity of tradition.<sup>5</sup> The communities of Jehovah's Witnesses and Reformed Baptists,<sup>6</sup> and a significant part of the Pentecostal Christians, survived in a similar manner.<sup>7</sup> The structures, parallel to the official ones, occurred in Catholicism, Judaism, and many of the Protestant denominations.<sup>8</sup>

Moreover, at times during the past twenty years, the populations of many cities and villages (mainly in western Ukraine) have petitioned for permission to open Orthodox temples. In 1985, these petitions came from 173 Ukrainian towns; however, none of the petitions were granted.

At the same time, the Soviet state implemented an extensive anti-religious propaganda campaign as a part of the political indoctrination of the people. A solid infrastructure contributed to the effectiveness of this effort. The farther from Moscow and the closer to the provinces, the more intensive the propaganda was.<sup>9</sup> Disagreements about the limitations on churches may have existed between: (a) the pragmatically disposed, foreign economic departments, including the KGB's cultural apparatus and (b) the propagandist services and local party organizations. Yet, these disagreements were usually solved in

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3. See VICTOR YELENSKY, *DERZHAVNO-TSERKOVKI VZAEWINI V. UKRAINE: 1917–1990* (1991).

4. According to one estimate, approximately 1200 unregistered sectarian groups operated illegally in the Soviet Union in 1985. D. A. Loeber, *Church and State*, in *ENCYCLOPEDIA OF SOVIET LAW* 103, 104 (F.J.M. Feldbrugge et al. eds., 2d ed. 1985).

5. "The Ukrainian (Greek) Catholic Church acknowledges the primacy of the Pope, but retains the Eastern (Byzantine) Rite. This church, known as the Uniate Church, lost its independence in 1946 when it was re-united under pressure with the Russian Orthodox Church in Moscow." Loeber, *supra* note 4, at 104. Many Uniates persisted in professing their faith, although forced to do so underground. *Id.*

6. The Reformed Baptists broke away from the recognized association, the All-Union Council of Baptists, which had been established in 1944. *See id.*

7. *See id.*

8. *See, e.g.*, JAMES THROWER, *MARXIST-LENINIST "SCIENTIFIC ATHEISM" AND THE STUDY OF RELIGION AND ATHEISM IN THE USSR* (1983).

9. During the "transitive" regimes of Yuri Andropov and Konstantin Chernenko, around one million atheistic lectures were given in the Soviet Union every year.

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favor of the group that stood for uncompromising limitations of religious activity and, especially, for manifestation of national and religious distinctiveness.<sup>10</sup>

*B. Religiosity in Ukraine Before the Great Transformation*

The achievements of the Ukrainian Communist administration in its efforts to substitute some secular ersatz-religion for religiousness were much more humble than was officially declared.<sup>11</sup>

Unfortunately, no reliable data is available to characterize the religious identification of the Ukrainian population in the 1970s and 1980s. Several factors render the sociological research from that period unreliable. These factors are: (a) a lack of trustworthy data accumulated by Soviet sociologists of religion; (b) peculiarities of the Marxist-Leninist view of religion, as described sometimes in empirical material; (c) the self-isolation of Soviet society and inclination of many faithful in the Soviet Union, particularly highly-educated persons who held social positions, to anonymously withhold their viewpoint, which presumably meant religiousness was higher than reported in this area; (d) subordination of religious studies to sociological methods with the aim of overcoming religion; and (e) outspoken “understatements” in the interpretation of the existing data. Significantly, in one treatise, the authors not only avoided estimating the level of religiousness throughout the Soviet Union, but also failed to report on the main results of their research on religions.<sup>12</sup> For instance, according to the results of representative investigation in Belorussia (ten thousand people were questioned in five to six regions of the republic), a detailed study of the social-demographic structure of what was termed a “religious” contingent had been conducted. However, there are no reports pertaining to the percentage of believers in this contingent in any of ten thousand

10. In 1929, the government revoked the right of registered religions to spread “religious propaganda.” In contrast, the government continued to uphold and employ its freedom to “spread atheist propaganda.” See Loeber, *supra* note 4, at 107 (citing U.S.S.R. CONST. art. 52 (1977)). This encouragement of atheist propaganda and prohibition of religious propaganda made religious freedom in the Soviet Union a mere pretense. See *id.* at 109.

11. Nikolay Berdyayev correctly asserted that totalitarianism by itself strives to be a church.

12. KONKRETNIE ISSLEDOVANIYA SOVREMENNIH RELIGIOZNIH VEROVANIY: METODIKA, ORGANIZATSIYA, REZULTATI 63–83 (Moscow 1967).

cases.<sup>13</sup> Similarly, the treatise presents another study that had been conducted in Sumska, Ternopil'ska, Ivano-Frankiv'ska, Zakarpatska, Chernigiv'ska, and other regions of Ukraine.<sup>14</sup>

Based on this evidence, we might assume that these results, obtained in a process of wide-scale investigations, were dissonant with the prevailing theoretical scheme—that the Soviet Union was a country of “mass atheism.”

Analyzing the fragments of empirical material that had been accumulated in a process of concrete-sociological research of religiousness in the Soviet Union from the mid 1960s to the beginning of the 1980s, William Fletcher comes to the conclusion that 45% of the population of the Soviet Union were believers. Fletcher also found evidence to counter the Russian sociologists' belief that religion was a phenomenon of the past that had been dying at the time of the 1917 Revolution.<sup>15</sup> Nevertheless, as Fletcher points out, the mentioned index is only an “average.” For the regions with an absolute predomination of Russians, it is high; but for the areas where Islam is widespread, as well as for Lithuania and western Ukraine, it is low.<sup>16</sup>

The outline of arguments proposed by Fletcher seems to be somewhat theoretical and abstract (mainly due to the limited empirical data that was available). Nonetheless, Fletcher's conclusions appear to be much more realistic than official declarations, such as the statement that the vast majority of Soviet people are neither influenced by nor members of any religion.<sup>17</sup>

Secret reports, submitted by party officials, reveal that in 1985, the first year of Gorbachev's reforms, 26% of newborns were baptized. Nearly 3% consecrated their marriage in a church, and over 40% of the dead were buried with a church's assistance. Notably, the figures on baptism and funerals performed by the Catholic Church in the Netherlands that same year did not essentially differ from the figures in Ukraine.<sup>18</sup> Undoubtedly, the Ukrainian figures are seri-

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13. *Id.*

14. *Id.*

15. WILLIAM C. FLETCHER, SOVIET BELIEVERS: THE RELIGIOUS SECTOR OF THE POPULATION 14–15, 211–13 (1981).

16. *See id.* at 69–70.

17. *See id.* at 211–13.

18. *See* Lilian Voyé & Karel Dobbelaere, *Roman Catholicism: Universalism at Stake, in* RELIGIONS SANS FRONTIERES? PRESENT AND FUTURE TRENDS OF MIGRATION, CULTURE, AND COMMUNICATION 83, 92 (Roberto Cipriani ed., 1993).

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ously underestimated. They do not include baptisms and funerals conducted by underground religious institutions, by clergymen in private, or by those not registered in a special book. In the big cities, these practices were common.

*C. Church and Society*

During the period of Brezhnev's stagnation, religion was firmly considered by the thinking public as an alternative system of values that could uncompromisingly withstand the official ideology and slogans, the untenability of which became more and more obvious. Noticing the increase of adult baptism, the obsession of the intelligentsia with religious literature, the growing popularity of religious broadcasting of foreign radio stations, and the outspoken neglect to the atheistic propaganda and other materials, party officials expressed anxiety over the anti-Communist trend of the spiritual processes in the country.

The church, apart from being the mystical body of Christ (i.e., the Eternal Church), was also a social institution that could not remain aloof from and indifferent to the effects of social development. From a sociological perspective, the existence of religious organizations in the former Soviet bloc countries required maintaining a difficult confrontational position vis-à-vis the state. In this relationship, the church needed to fight to preserve its "independence."<sup>19</sup> The church also had to face the very real problem of its future existence. Essentially, the church was forcibly removed from the sphere of social service; this action, according to church leaders, was a matter of principle.

The church had no right to engage in missionary work or in evangelism. It could not even take care of the poor or act as a spiritual guide for people. Consequently, its status as an impotent institution was crystallized.

Under these conditions, it is unlikely that religious institutions in post-Communist countries on the whole, and in Ukraine in particular, would be able to develop a synthetic religious point of view concerning church activity in the post-totalitarian landscape. These religious institutions were probably not capable of immediately finding adequate answers to the challenges posed by society. Weakened reli-

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19. In fact, the church has been fighting to secure its independence for nearly 2000 years.

gious institutions had to deal with a barrage of contradictions—a barrage initiated by the repressive Soviet regime.

After the fall of the Communist regime, a conflict that may be described as a “conflict of anticipations” soon appeared. Caused by a difference between the expectations placed upon the church after the fall of the Communist regime and the actual social and cultural potential of the church and its clergy, this “conflict of anticipations” lasted only during the 1990s.

## II. RELIGION, RELIGIOSITY, AND CHURCHES IN THE CONTEMPORARY UKRAINE

### *A. The Institutional Religion*

The real changes in the religious situation in Ukraine started in mid-1988, the year of the thousandth anniversary of Rus’s baptism. Beginning in mid-1988, “the new way of thinking” of the Kremlin finally affected the sphere of church-state relations. During Gorbachev’s first years in power, legal and secret restrictions on religious practices were somewhat relaxed, and by 1989, all religious prisoners and deportees were allowed to return home. Among those released were a number of Uniate priests and religious freedom defenders.

In August 1987, a group of bold Greek Catholic clergymen and lay activists declared their emergence from the underground and appealed to Pope John Paul II for help in the restoration of the church’s rights. In October 1989, a large Orthodox parish in Lviv declared itself to be of the Uniate faith. Hundreds of other churches followed suit. In November 1989, the Ukrainian Council for Religious Affairs offered to allow registration of individual congregations of Uniates. A few days later, the Pope met President Gorbachev in the Vatican.

Beginning in 1989, hundreds<sup>20</sup> of Russian Orthodox Church parishes (mostly in western Ukraine) declared themselves as belonging to the Ukrainian Autocephalous Orthodox Church (“UAOC”).<sup>21</sup>

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20. Orest Subtelny estimates that approximately 1650 parishes had defected from the Russian Orthodox Church to the Ukrainian Autocephalous Church (“UAOC”) by June 1990. OREST SUBTELNY, *UKRAINE: A HISTORY* 579 (2d ed. 1994).

21. UAOC had not had a presence in Ukraine since the 1930s and had been based abroad. When the UAOC re-emerged in 1990, it began to compete “for Orthodox loyalties.” *Id.* at 578–79.

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At its All-Ukrainian Council in Kiev in June 1990, the UAOC proclaimed itself a Patriarchate and elected as its first patriarch ninety-two-year-old Mstyslav Skrypnyk, the head of the UAOC in the West.<sup>22</sup> Skrypnyk was the only surviving hierarch from the “second” UAOC, which dated back to World War II.<sup>23</sup>

From 1988 to 1990, there was a mass opening of formerly closed temples, monasteries, and ecclesiastical schools. The number of religious communities increased an average of 32% every year during that period. In 1990, the growth rate was 30%, which decreased each year until 1997: 1992—less than 8%; 1993—6.5%; 1994—5.5%; 1995—6.6%; 1996–1997—less than 5%. By 2001, one religious community in Ukraine corresponded to nearly two thousand inhabitants; this number is higher, however, than in neighboring countries that formerly were the part of the Soviet Union.

Over half of the religious communities in Ukraine are Orthodox, 20% are Greek-Catholic, and the other 20% are Protestants of various trends. Although Protestant churches make up a large percentage of the total number of churches, those who attend protestant churches add up to a small percentage of the total number of church-going Ukrainians. Of the respondents who consider themselves religious, 72.0% belong to Orthodox Churches, 17.0% belong to the Greek Catholic Church, 5.3% belong to Muslim communities, 2.2% belong to different Protestant congregations, 1.6% belong to the Roman Catholic Church, and approximately 1.2% do not belong to any religious group. Approximately half of the religious communities in Ukraine are located in the seven western Ukrainian regions. Notably, these regions are inhabited by only 18% of the whole population of the country. Before World War II, these territories (slightly more than 18% of the area of Ukraine with its present borders), were outside of Soviet Union’s boundaries. In this region, the older generation managed to obtain more or less satisfactory religious instruction and the Soviet transformation was conducted without the degree of brutal eradication of religious institutions that occurred in the Soviet Ukraine. Thus, the church preserved the functions of social communication, ethnic identification, and moral arbitration. In eastern and southern Ukraine, the church practically lost these functions.

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22. *See id.* at 579.

23. The “first” UAOC was the ecclesiastical body that proclaimed itself independent from the Moscow Patriarchate in October 1921 and was forced underground by the Soviet regime in the 1930s.



The difference between the levels of religious culture in western Ukraine and eastern Ukraine is essential. The level of declaration of religiousness in western Ukraine, particularly in the three regions of Eastern Galicia, where the Ukrainian Greek-Catholic Church dominates, is 3 to 3.5 times higher than in eastern Ukraine. For instance, in the Ternopil'ska region, in western Ukraine, there is one religious community per each 688 inhabitants; in Khakiv, in eastern Ukraine, there is one religious community per each 4880 inhabitants.

*B. The Level of Religiosity*

The number of Ukrainians who declare themselves to be religious is increasing rather quickly: in 1997, 64% of those questioned declared themselves to be religious.<sup>24</sup> The level of confessional identification is quite high too; the percentage of those who consider themselves believers but do not identify themselves with any religious institution is 3% or less. The portion of people who attend church services regularly (i.e., more often than once a month) is 19%; this figure places Ukraine approximately into the middle of the Central-Eastern European pyramid, behind Catholic Hungary, but ahead of the Czech Republic, eastern Germany, Latvia, and Estonia.<sup>25</sup>

However, the church's role in post-Communist Ukraine seems to be rather paradoxical. On one hand, up to 75% of the Ukrainian population trust the church more than any other social institution. Neither the president, the government, the parliament, nor the army can compete with the church on the subject of trust in public opinion polls. Based on the powerful impulse of social "advancement" given to the church in the 1980s, there was a hope that numerous problems, unsolvable by official institutions, would be solved by unofficial institutions. The most structured of the unofficial institutions were religious organizations.

The number of respondents stating that religion was helpful for society essentially exceeded the number that considered religion as beneficial for them personally. But the church often appears to be unable to provide actual support of political projects by means of its

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24. See Survey, *Democratic Initiatives Foundations*, at <http://www.ukma.kiev.ua/pub/DI/di.htm>.

25. Cf. PAUL M. ZULEHNER, *KIRCHEN IM ÜBERGANG IN FREIHEITLICHE GESELLSCHAFTEN* 31 (1994).

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own believers. And this is true not only in Ukraine, but also in many other post-Communist countries.

### III. THE UKRAINIAN CHURCHES AND POST-COMMUNIST CHALLENGES

#### *A. The Rural Background of Ukrainian Religious Life*

A fundamental fact to remember is that the Ukrainian culture has always been essentially, if not mostly, a rural culture. The social structure of Ukrainian society ironically has been defined as consisting of “a priest and a peasant.” Furthermore, neighboring political and cultural centers influenced the Ukrainian aristocracy; as a result, these centers were “Polonized” or “Russianized.” The return to the cultural roots of one’s ancestors, like the return made by the future Metropolitan Andrey Sheptytsky, was the exception to the rule.<sup>26</sup>

Within quite a short time—approximately forty years—Ukraine has transformed from an almost completely rural nation into a nation that is mainly urbanized (in 1998, there were seven cities in Ukraine with populations of more than one million each). The Stalinist industrialization, which began after World War II, consisted of the merciless house-breaking and suppression of peasants, the physical extermination of peasants, and the peasants’ permanent exodus from ruined villages. These events destroyed the traditional Ukrainian cultural archetype drastically—so drastically, in fact, that the preservation in such circumstances of surviving elements of traditional religious culture can be regarded as a manifestation of the high viability of Ukrainian ethos.

#### *B. Post-Communist Challenges*

The dramatic migration of people from the fields to the cities has resulted in the development of a specific type of religious culture in

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26. Metropolitan Sheptytsky came from an aristocratic Polish-Ukrainian family that had become Polonized (in the male line of descent) at least a century before his birth. His maternal grandfather was a well-known Polish playwright, Count Alexander Fredro, whose family was Catholic of the Roman rite. Thus, Sheptytsky’s decision in favor of the nationality of his forefathers and his transfer to the Eastern (Greek) culture came as a shock, first to his family, then to Polish society. See Ryszard Torzecki, *Sheptyts’kyi and Polish Society*, in *MORALITY AND REALITY: THE LIFE AND TIMES OF ANDREI SHEPTYTS’KYI* 75–98 (Paul Robert Magocsi & Andrii Krawchuk eds., 1989).

Ukrainian cities. This religious culture, metaphorically speaking, could hardly be translated into language that is common for the contemporary megapolis. This incongruity between traditional religious culture and city life became especially obvious when the historical churches of Ukraine began to severely compete with Protestant churches and missions of Western origin. While the traditional churches of Ukraine exhausted themselves trying to withstand the Soviet regime, these traditional churches also tried to preserve their own tradition. Very often, a new social or political development meant for these churches a return to the pre-Soviet status quo. However, not only seven decades, but the entire twentieth century had passed. During that time, the Second Vatican Council took place, there were breakthroughs in Protestant theology, and the post-Osvenzym and post-Gulag theologies held significant influence. All of this changed the traditional churches as compared to their state in the pre-Soviet era. In addition, there were achievements in the evangelization of “Homo urbanus,” which were made by the Orthodox and Greek-Catholic Churches.

The dissatisfaction of Orthodox and Greek-Catholic believers—dissatisfaction with the intensity of religious life and with the role of religious communities in satisfying social and cultural needs—was most strongly revealed in the cities. It is apparent that the elevated level of dissatisfaction results from the way religion is communicated in the city, where immediate contact is replaced with indirect communication with ever-increasing frequency.

As a result, the development of neo-Protestant trends in cities appears to be more dynamic than the development of historical trends. In the cities, Protestant institutions developed effective missionary operations, which depended on mobile missionary groups that have experience and great financial potential. Suffice it to say that only 29% of all missions operating today in Ukraine were founded by Orthodox and Catholics; the others were founded by Protestants. In many big cities, Protestant communities are beginning to outnumber Orthodox ones.

## IV. THE POSITION OF RELIGIOUS MINORITIES

*A. The Religious Minorities Under the Soviet Regime*

Although it varied over time, the Soviet regime's attitude toward minority religions was determined by the Soviet regime's general approach to religion and religious institutions. During the Lenin period, religious minorities were considered a serious counterbalance to the Russian Orthodox Church, which was an integrated element of the tsarist regime and, consequently, represented a special danger to the Bolsheviks. During the years of the Stalinist terror, religious minorities were persecuted with the same ferocity as the Orthodox Church. Yet by the time Stalin's so-called National Economic Policy ("NEP") connected with the constitutionalization of the Stalin empire with "the main people," the situation had changed. The Russian Orthodox Church was integrated into the ideological state device. Thus, loyalty of religious minorities to the state became the subject of suspicion, and pressure on religious minorities grew.

During the Brezhnev period, the attitude of the regime to religious minorities was formed through interaction of the following factors:

1. The state's attempts to prevent the formation of a union of ethnic minorities dedicated to national liberation and based upon religious feelings and institutions;
2. The necessity of maintaining, for the sake of the West, a facade of observance of human rights and freedoms for religious minorities based on the notion that the West used these issues as an instrument of pressure against the Soviet Union; and
3. The desire to restrict religious activity that eventually was a danger to the Soviet system. Notably, religious minorities were the group that demonstrated the most significant resistance to the regime and achieved prominent successes in dissemination of their beliefs and defense of their religious dignity.

Finally, during his visit to Poland, Mikhail Gorbachev recognized that "we, the communists, did a great deal of damage with respect to

the Church.”<sup>27</sup> It was the first recognition by a figure in the Soviet hierarchy of the absurdity inherent in the Soviet model of church-state relations. Four years later, while summarizing the results of his reforms, the first and last Soviet Union president, in spite of the embarrassment caused by attacks from his enemies and former comrades, still had a right to conclude that religious freedom in the Soviet Union had become a reality.

The liberalization process in Ukraine dragged behind that in Moscow. The old Communist party elite that severely administered the situation in the country blocked the way for a majority of the innovations in Gorbachev’s spirit “of new thinking.” By the end of 1988 and the beginning of 1989, the Communist leadership of Ukraine embodied the last group who had yet to retreat from the orthodox Stalinist views on religious freedom. This last group encouraged the “establishing of special relations” and union with the hierarchy of the Ukrainian exarchate of the Russian Orthodox church in the struggle with “anticommunism and nationalism.” At the same time, this group sought strict prohibition against the revival of the prohibited Ukrainian Greek-Catholic Church and Ukrainian Autocephalous Orthodox Church.

According to the plan of the creators of this last edition of the church-state relations model in the Soviet Ukraine, religious minorities had to observe a favorable neutrality toward the regime in this struggle. This neutrality was supposed to be brought about by giving more freedom to religious minorities while canceling numerous restrictive regulations adopted previously during the time of Khrushchev’s anti-religious policies of the 1950s–1960s.

The struggle of the new regime with the Ukrainian Catholics and the regime’s struggle against the movement for independence of the Ukrainian Orthodoxy from the Moscow Patriarchy created opportunities for religious minorities in Ukraine to restore their institutional structure, to establish close relations with coreligionists abroad, and to develop missionary activity.

### *B. Religious Minorities in Contemporary Ukraine*

Many experts predicted in the second half of the 1980s that the growth of nationalism and the struggle for national identity in

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27. Mikhail Gorbachev, Meeting with Representatives of Polish Intelligentsia (1988).

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Ukraine would be followed immediately by especially strong persecution of religious and ethnic minorities. A decade later, one can assert that the transition period in Ukraine turned out to be more complicated than in many other post-Communist countries. But there is something quite different as well; namely, in Ukraine, religious and ethnic minorities feel far more comfortable than their partners in the majority of other eastern European countries.

A sufficiently complicated and interconnected network of factors contributed to the current situation. The most significant among them may be arranged in five groups.

### *1. Religious configuration in Ukraine*

Several centers of religious power exist in the Ukraine. This fact prevents any one of these power centers from dominating over religious minorities or from conducting repressive or even restrictive policy toward them. These power centers function as rivals, addressing their own sector of public opinion and their own corresponding circles of political elite. They create a kind of balance that prevents the establishment of a religious institution that would dominate supremely over others and with which one might identify (*de facto* if not *de jure*) the Ukrainian state. As Bohdan R. Bociurkiw wrote,

[t]he overall religious picture of contemporary Ukraine is that of religious pluralism more publicly tolerated than in Russia. This challenges the traditional view of Ukraine as an Orthodox-Uniate Country. It reflects . . . the more complicated ethnic composition of Ukraine—a product of both forcible transfers of various nationalities and greater demographic mobility.<sup>28</sup>

### *2. Ukraine's liberal church-state legislation*

This legislative model has defects typical for the post-Soviet countries. However, with the exemption of the Amendment to the Article 24 of the Law “On Freedom of Conscience and Religious Organizations,” this model is extremely favorable for religious minorities.<sup>29</sup>

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28. Bohdan Bociurkiw, *Politics and Religion in Ukraine: The Orthodox and the Greek Catholics*, in *THE POLITICS OF RELIGION IN RUSSIA AND THE NEW STATES OF EURASIA* 131, 152 (Michael Bourdeaux ed., 1995).

29. UKR. CONST. ch. 2, art. 24 (1996).

*3. The special position of ethnic minorities*

Two ethnic groups, Jews and Muslims, are significant because they are the largest ethnic minorities in Ukraine for which religion is a core part of their ethnic identity. The Jewish community consists of about one-half million, and the community of Crimean Tatars consists of almost 300,000 members. These two communities are considered important allies in strengthening Ukrainian statehood, and they are in fact such allies. With the exception of some extremists, the Ukrainian dissidents in the Brezhnev era considered the Jewish and Crimean-Tatar right-defenders as comrades in the anti-imperial struggle. After Ukraine attained its independence, many Ukrainian dissidents occupied important positions in society. Ukrainian history is indebted to them for the opportunity to overturn at the end of the twentieth century the universality of the bitter statement by the great Jewish historian Shimon Dubnow, who wrote: "The experience has proved that any explosion of the national passions among any people first of all aggravates the attitude of this same people to the Jews living among them."<sup>30</sup>

*4. Tolerance towards other faiths*

The Ukrainian Orthodoxy's tradition of a sufficiently tolerant attitude towards the adherents of other faiths is an important distinction between Ukrainian and Moscow Orthodoxy. After the Kiev metropolity became connected with the Moscow Patriarchy in the seventeenth century, this tolerance of other faiths, openness to Western ideas, and freedom to communicate with non-Orthodox groups brought on the severe criticism of the Moscow hierarchy against the Kiev priesthood.

*5. Historical influence*

Finally, it is evident that predictions concerning possible future development of interreligious and interethnic processes in Ukraine after attaining state independence were constructed in many cases under the influence of historical reminiscences of the seventeenth and eighteenth centuries rather than on the basis of the social-political and social-psychological analysis of the Ukrainian situation.

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30. SIMON DUBNOW & BENZION DINUR, TWO CONCEPTS OF THE REBIRTH OF ISRAEL 101 (1990).

*C. The Religious Minorities in Public Opinion*

According to a 2001 poll, more than 66% of the adult population in Ukraine declared their religiosity. Among this number, more than 70% considered themselves Orthodox believers and nearly 17% considered themselves Eastern Rites Catholics. The correlation between religious activity and awareness of religious doctrine, on the one hand, and the critical attitude to the precepts of other faiths, on the other hand, is doubtless. At the same time, one can describe the attitude of the population at large toward religious and ethnic minorities as being tolerant rather than hostile. Thus, for example, according to the Socis-Gallup Poll, 33% of respondents preferred to live in a society where religious and ethnic minorities must restrict their claims and adjust to the majority of citizens. At the same time, 41% of respondents did not wish to live in such a society and 25% did not declare their preference. It is of interest that in Galychyna—the three regions of the western Ukraine justifiably considered to be the bastion of Ukrainian nationalism—those who thought that minorities should restrict their claims were only 19% of the population. In Crimea, where the Russian majority painfully observed the return of the Crimean Tatars to their historical homeland, 61% thought that minorities should restrict their claims. At the same time, activity of foreign missions caused a rather critical reaction in public opinion. Only 7.2% of the Kievites questioned by the Ukrainian Sociology Service in 1997 supported activity of foreign missions; 38.7% were indifferent to missionary activity, and 17.6% were of the opinion that such activity must be prohibited completely.

*D. The Established Churches and Religious Minorities*

As a rule, the hierarchy of the Orthodox churches abstains from criticizing religious minorities that are traditional for Ukraine, such as Jews, Muslims, Reformists, Baptists, and Pentecostals. At the same time, Orthodox hierarchs sharply criticize the activity of the Roman Catholic Church in Ukraine, accusing it of proselytizing and expanding on the east. Even though the Catholic community in Ukraine (of the Latin and Eastern rites together) is the largest among the countries of the former Soviet Union, the Orthodox hierarchs under the jurisdiction of Moscow Patriarchate alone managed until now to block the visit of Pope John Paul II to Ukraine and the opening of the Ukrainian embassy in the Holy See.



The Orthodox churches and the Greek-Catholic church demonstrate a most hostile attitude to the foreign religious missions and new religious movements ("NRM"). In fact, the ambition to put aside these rivals became one of the most important goals of the church administrations. The church hierarchs appeal constantly to the public, to the local authorities, and to the Ukrainian government for protection against foreign missionaries and the NRM.

The Orthodox hierarchs brought forward demands of this kind during meetings of the religious leaders with President L. Kravchuk in June 1994, with President L. Kuchma in July 1994 and in March 1996, and with the Chairman of the Ukrainian Parliament, O. Moroz, in December 1994.

*E. The Problem of the Orthodox-Jewish Dialogue*

The core problem with dialogue in Ukraine between Jews and Orthodox believers ("Orthodox-Jewish dialogue") is that such dialogue essentially does not exist. In the post-Soviet history of dialogue between Orthodox believers and Jewish believers, the most prominent event was perhaps the address of the Moscow Patriarch Alexiy II, whose jurisdiction includes 70% of the Orthodox Ukrainian parishes, before the representatives of the Jewish community of New York. The head of the Russian Orthodox church did not propose any new approaches in the framework for eliminating antagonism between Orthodoxy and Judaism. The Patriarch made references to the ideas of famous hierarchs of the last century. The Patriarch restated the brilliant thesis that "[w]e [the Orthodox] are separated from Jews because we are 'not yet fully Christians,' and they . . . are separated from us because they are 'not fully Jews.'"<sup>31</sup> In other words, the cause of the resentment of the Orthodox fundamentalists was simply their unwillingness to progress beyond the Orthodox-Jewish dialogue of more than a century ago. It was an excellent test to verify the health of the church organism. This test has demonstrated that the organism is not quite healthy, even if there are no other indications of its ailment.

One of the predominant sources of anti-Semitism in Ukraine

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31. Patriarch Aleksi II, *Your Prophets Are Our Prophets*, in *CHRISTIANITY AFTER COMMUNISM: SOCIAL, POLITICAL, AND CULTURAL STRUGGLE IN RUSSIA* 103, 103-06 (Niels C. Nielsen, Jr. ed., 1994). This thesis was originally proffered by Nikanor Brovkovitch, the nineteenth century Herson and Odessa Archbishop.

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may not be domestic anti-Semitism. Even the anti-Semitism of the intellectuals may not be the most fruitful source because none of the influential political forces in Ukraine raise the standard of anti-Semitism. However, the anti-Semitism of theologians may really become a serious problem. Today the anti-Semitism of theologians is free from its extreme manifestations and does not charge the entire Jewish people with the murder of Jesus Christ. Nevertheless, the attitude of Orthodox believers to Jews still rests on the old premise that the Old and New Testament are contradistinguished. The salvation of Jews is not annihilated, but it is postponed. The Judaism of Jesus Christ has value only as a precursor of Christianity; after Jesus Christ, Judaism loses all its value. Such an approach negates any self-sufficiency of Judaism, eliminates the uniqueness of Judaism's spiritual experience, and disallows the competent status of Judaism in the dialogue. Thus, the problem of the Orthodox-Jewish dialogue, and even of the broader Christian-Jewish dialogue, is the problem of each partner in the dialogue renouncing possession of the universal truth.

*F. The State Versus Foreign Missionaries and the NRM*

Towards the end of 1993, the government in Kiev began to take a more severe attitude toward foreign missions, the communities created by them, and the NRM. This severe attitude developed because the state authority experienced pressure from the hierarchs of the historical churches, from the mass media, and from the anticult movement that became considerably stronger during the trial of the leaders of the White Brotherhood. The political position of the government also proved to be a factor. In December 1993, the Ukrainian Parliament adopted the Amendment to Article 24 of the Law on "Freedom of Conscience and Religious Organizations" that was directed against foreign missionary activity. (This amendment is discussed in more detail below.) During the years that followed, statements of officials revealed the strengthening of the movement against so-called totalitarian destructive sects and missionaries from abroad. During celebrations of the fifth anniversary of Ukraine's independence, President L. Kuchma spoke openly against the "build-up of the active foreign missionary organizations in the Ukrainian religious space."<sup>32</sup>

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32. See RABOCHAYA GAZETA (WORKING NEWSPAPER) (Kiev), Aug. 28, 1996.

The activity of foreign missionaries in Ukraine as well as in other post-Soviet countries was not always flawless. The president of the Slavic Gospel Association, Peter Deineka, admits: "The hostile reaction on the Western missions is often caused by the doubtful actions of separate missionaries. Some Western missions committed morally doubtful or harmful actions [including], for example, attack on the Orthodox Church."<sup>33</sup> At the same time, one can easily understand the desire of the Ukrainian political elite to use the myth of "the sect's danger." Under the conditions of this many-sided and exhausting interchurch conflict, this "danger" operated as an external factor in reconciling competing church institutions.

Recently, the pro-government mass media and the leftist press have clamored against "sects." After part of the 50,000 faithful of the Charismatic community supported the opposition party, led by former Prime Minister of Ukraine, Pavlo Lazarenko, the problem of "sects" became the central point of the political struggle. The activity of the Charismatic community, as reported by the opposition press, was even discussed at a session of the National Security Council.

#### V. CHURCH, STATE, AND HUMAN RIGHTS ISSUES

The making of a new system of church-state relations in Ukraine proceeded against the background of the most severe economical crisis, a sharp political struggle, and the manifestation of previously latent, interchurch conflicts.

##### *A. The Interchurch Conflicts*

First, the legalization of the Ukrainian Greek-Catholic Church created a new reality in Ukrainian religious life. This church of almost five million members had been the catacomb church and was considerably decimated, but not completely annihilated, by the Communist regime. Legalization of this church was not recognized by the Orthodox hierarchy and believers. As a result, a severe struggle between Orthodox and Greek-Catholic powers arose in western Ukraine over which church would have a hold on the believers and

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33. MARK SMIRNOV & GEORGIJ AVVAKUMOV, RELIGION UND GESELLSCHAFT IM POSTSOVJETISCHEN RAUM 106 (1996).

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achieve the dominant position in the parceling of church buildings and property.<sup>34</sup>

This struggle, which was accompanied by a physical fray between believers of the conflicting churches in the early 1990s, has already passed the most serious stage of its development but is still far from being fully reconciled.

The problems of the Orthodox Church in Ukraine are, in large part, a reflection of the Ukrainian historical drama or, at the least, adequate reflections of the political and cultural contradictions in Ukrainian society and the conflict of different identities and different models of historical memory. The idea of separation from Moscow Patriarchate has existed from the very beginning, when the Kiev Metropolia was transmitted to Moscow Patriarchate from Constantinople Patriarchate in 1686. This idea was not entirely obliterated during the next three hundred years during the existence of the Kiev Metropolia as part of the Russian Orthodox Church; unassimilated elements of the idea were always present. On the other hand, historical interpretations of Ukrainian Orthodoxy—that the Russian Church is something external and alien to the Orthodox Church in Ukraine—certainly do not take historical facts into consideration.

It is clear that in the eighteenth century Kiev had a great influence on the formation of the Russian Orthodoxy personality, which is considered important by some theologians and historians. At the same time, it is obvious that historians have no right to consider the opposite influence based only on the facts of the russification of Ukraine with the help of the Orthodox Church.

In the twentieth century, the movement for Ukrainian independence occurred simultaneously with the movement for the independence of the Orthodox Church in Ukraine. Ultimately, while part of the Orthodox people considered this independence to be a self-sufficient value, the rest of the Orthodox people did not view independence in the same way.

The reappearance on Europe's political map of several newly independent states at the end of the 1980s and the beginning of the 1990s led the Orthodox churches in these countries to seek independence or to change their jurisdiction. This desire has met strong

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34. See R.G. Weakland, *Crisis in Orthodox-Catholic Relations: Challenges and Hopes*, in 166 AMERICA, no. 2.; Serge Keleher, *Out of the Catacombs: The Greek-Catholic Church in Ukraine*, in 19 RELIGION IN COMMUNIST LANDS 251, 251–63 (1991); J. Erickson, *A New Crisis in Catholic Orthodox Dialogue*, in 27 ECUMENISM, no. 107 (1992).

resistance from some Orthodox capitals and has resulted in the outbreak of nationalistic intolerance. New zones of contradiction emerged in Europe. The situation has been further aggravated with the involvement of state resources and the recognition of this situation's relevance to international relations (as in Ukraine, Estonia, Moldova, and Macedonia).

But the Orthodoxy in Ukraine happened to be in the most dramatic condition. In Ukraine, three Orthodox Churches exist: (1) Ukrainian Orthodox Church of Moscow Patriarchate ("UOCMP"), which has more than 9500 parishes, 8000 priests, 131 monasteries with 3700 monks and nuns, and 15 theological institutions with 4100 students; (2) Ukrainian Orthodox Church of Kiev Patriarchate ("UOCKP"), which is headed by Patriarch Filaret and is anathematized by the Russian Church and has 3050 parishes, 2400 priests, 28 monasteries, and 15 theological schools with 1600 students; and (3) UAOC, which is seeking to be under the jurisdiction of the Constantinople Patriarchate, and has more than 1050 parishes, 3 monasteries, and 8 theological schools.

Orthodox congregations make up 53% of all religious organizations with registered charters. In this sense, Ukraine cannot be regarded as entirely Orthodox. Approximately 8% to 9% of adults belong to the Roman and Greek Catholic churches; the membership of Protestant denominations who were baptized and recorded in the Church books numbers about one million.

However, more than half of all respondents surveyed declared that they belonged to the Orthodox church. Surprisingly, most of them do not belong to the Ukrainian Orthodox church of Moscow Patriarchate, but rather they belong to the Ukrainian Orthodox Church of Kiev Patriarchate.

From 25% to 32% of those surveyed declared that they belonged to the UOCKP, from 7% to 12% declared that they belonged to the UOCMP, and from 0.5% to 2% declared that they belonged to the UAOC. For those who are acquainted with the realities of Ukrainian religious life, there can only be one explanation for these results. By declaring that he or she belongs to the Kiev and not to the Moscow Patriarchate, a person declares his or her identity with a Ukrainian vector. Furthermore, most respondents are nominal Christians—"nonpracticing" and, sometimes "nonbelieving," Orthodox members.

On the other hand, the research indicated that 12.2% of the Do-

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netsk region's population and 35.3% of Simferopol's population belong to the Russian Orthodox Church. Yet in Donetsk, at least officially, there is no such church and, in Simferopol, less than ten such churches exist compared with three hundred congregations of UOCMP. Clearly, these results are a demonstration of Russian identity in these regions.

Where the survey form allowed the choice "an Orthodox who did not determine his position regarding the denomination," (as proposed by SOCIS-Gallup-Ukraine service in 1997) 40% of the respondents in some regions chose this response.

Obviously, at least in three post-Soviet republics—Russia, Ukraine, and especially in Belorussia—there are people who deal with real difficulties in the sense of their identity. They do not feel that they are "Soviet people" because of their political convictions, but they cannot equate themselves with any one ethnic commonality—Ukrainian, Russian, or Belorussian. The survey of public opinion done in 2000 in Ukraine showed that 39% of those surveyed identified themselves first of all according to the place where they live (region, city, village); 35% identified themselves with Ukraine; 10% still consider themselves as Soviet people; and only 2% consider themselves as belonging to Europe.

Once more, the conflict among Orthodox churches themselves, which is, more or less, an adequate reflection of (a) the social, political, and cultural contradictions of Ukrainian society and (b) the distinctions in the levels of national self-realization, seems to be even more dramatic. The basis of this conflict is the different attitudes about the sovereignty and independence that the Ukrainian Orthodox Church has obtained from the Moscow Patriarchate. The Ecumenical Patriarchate and other local Orthodox churches now recognize only one Ukrainian Orthodox Church—the one under the Moscow jurisdiction. Both the Ukrainian Autocephalous Orthodox Church and the Ukrainian Orthodox Church are labeled by Moscow Patriarchate as "heretic splits." However, having proclaimed the entire territory of the former Soviet Union as "canonical territory" of the Moscow Patriarchate, the Russian Orthodox Church has found itself in a state of "canonical war," not only with Ukrainian Orthodox churches but also with the Constantinople and Romanian Orthodox churches. The subordination to the Moscow Patriarchate is completely unjustifiable and offensive for one part of the Orthodox

believers while the other part considers such a subordination to be a quite normal phenomenon.

As of mid-1999, conflicts among the Ukrainian Orthodox churches and conflicts between the Ukrainian Orthodox churches and the Ukrainian Greek-Catholic Church were registered in 350 population points (populated localities) in Ukraine. One obstacle to the regulation of these conflicts is the transient nature of society because the conflicts may not be localized and solved separately. On the contrary, the transient nature of these conflicts creates new problems by creating the so-called “domino effect.”

*B. Religious Freedom and Religious Human Rights in Ukraine*

As to human rights, Ukraine has relatively good figures in the sphere of religious freedom and religious human rights. Ukraine, which is not “the best student” in the school of democracy for post-Communist countries, has relatively decent standards in the sphere of religious freedom for four principal reasons. The first reason is the religious configuration of Ukraine. The second reason is the weakness of Ukrainian nationalism and the lack of strict denominational identity, which does not allow the establishment of a religious monopoly. Ukrainian national myth is not really connected with religion. When we speak about the Ukrainian person, we do not mean the religious identity as we do when we speak about Poles, Serbs, Georgians, or Croats. The third reason, which in my opinion is very important, is the type of religious culture. Because the essence of post-Communist religious changes is the restoration of religious cultural types that have been created over centuries and were destroyed to a certain extent by Communist regimes, Ukrainian religious cultural types need to be considered separately. However, at the present time, the Ukrainian religious culture has a high level of tolerance toward other believers. The “Ukrainian Project,” which was largely based on the intentions of nineteenth century Galychyna thinkers who believed that the western Ukraine should not be Polish, Austrian, Russian, nor Muscovite but instead part of a great Ukrainian nation, meant the deliberate abstraction of religious differences between Catholics and Orthodox. In his 1906 article, *Ukraine and Galychina*, Michailo Hrushevs’ky warned the compatriots of the reoccurring danger of Serbs and Croats, religiously divided

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nations which have arisen on the common ethnic base.<sup>35</sup> The final reason is that religious freedom in Ukraine never threatened the government's position as, for instance, the freedom of speech can. Respectively, the Ukrainian government had no reason to seek the destruction of religious freedom.

*C. Orthodox Churches and Human Rights Issues*

Obviously, the situation of religious human rights in Ukraine cannot be considered stable. One can ask how interested Ukrainian Orthodox people are with human rights issues.

By reviewing the materials of Bishops Councils and Synods of Ukrainian Orthodox churches; All-Church Meetings and Conferences; interviews with church leaders by mass media; various statements, approvals, and reports of meetings with Ukrainian political leaders, one can roughly create the following structure of concerns. First, some significant problems are the issues of returning facilities and properties to the church, of loosening the tax burden, of preventing the possible privatization of former church properties, and of creating advantages for getting humanitarian aid.

A second concern is the providing of a more qualified presence in different social spheres, where the social service needs to be accompanied with apostolic service and where the church has access to organized and very important social institutions—schools and the military.

Finally, the third issue, where the church's concern with the affairs of the state and society is obvious, is the issue of competitive activities of other religious organizations, both new and nontraditional for Ukraine. These organizations are founded overseas or are simply Orthodox churches of different jurisdictions. The sphere of human rights and freedoms is not the center of concern. Among a few church statements is found an initiative of the leaders of UOCMP regarding amnesty for prisoners due to the two thousand-year anniversary of Jesus' birth and the speech of the late UAOC primate Dimitry against the delay of salary payments.

In fact, in recent years, the only mass movement for the right not to pay taxes, a right not to aggravate one's personal conscience by "Caesar's" demand, was the refusal of about fifty-thousand faithful

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35. Michailo Hrushevs'ky, *Ukraine and Galychyna*, in 36 LITERATURNO-NAUKOVII VISTNIK (1906).



followers of the Ukrainian Orthodox Church of Moscow Patriarchate to have individual identification codes. In this case, the theological basis of the problem and its social-church status were not considered. It is quite indicative that the UOCMP, having regained a voice after seventy years of silence, focused on the idea of not accepting identification codes, yet did not consider expressing its position regarding the main social problems or evaluating the events and processes which had changed living conditions and put people in the position of moral choice. This fact suggests the social marginalization of the Church.

Once again in Ukrainian history, the government faced believers determined to suffer rather than accept the government burden because of ideas that the believers considered ontologically important. Characteristically, the majority of officials considered these ideas to be senseless. Finally, the government was forced to provide the believers with a softer alternative. This incident is a very important precedent in modern Ukrainian history.

*D. Attitudes of the Orthodox Clergy Toward Human  
Rights Issues: The Case of Ukraine*

The relation of Orthodox churches toward religious freedom problems and human rights issues still has not been determined. During the year 2000, I surveyed ninety-four Orthodox priests of all three jurisdictions in seven Ukrainian regions. My survey proceeded as a standard interview, lasting sometimes for two hours and covering the whole range of problems. Some of my results are listed below:<sup>36</sup>

Which of the statements do you agree with?

- Individual human rights are more important than state and society interests—25.5%
- State and society interests are more important than individual human rights—67%
- Private property is a natural and inalienable individual right—47.8%

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36. Included in these percentages are those who answered, "I absolutely agree," and, "I disagree." Those who answered, "I agree and disagree," "No response," or, "I am not sure," are not included.

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- Private property is the source of sin, wars, and hatred—38.3%
- The death penalty is not allowed in any circumstance—11.7%
- The death penalty in some cases is needed—82.9%
- Equality is more important than freedom—52.1%
- Freedom is more important than equality—45.7%
- Religious freedom can be limited only in cases where its manifestation threatens life, health, and freedoms of other people—18.1%
- Preaching of false teachings is not religious freedom and needs to be limited—75.5%
- Democracy for Ukraine is an untimely issue—30.9%
- Ukraine suffers from a lack of democracy—51.1%
- Freedom of mass media is very important to me—9.6%
- Freedom of mass media is not very important to me—88.3%
- Order in the country is more important than freedom—61.7%
- Freedom is more important than order in the country—38.3%

The interviews with Orthodox clergy show that the most painful problem for the Orthodox mentality is the protection of collective identity. In fact, in each interview the concern about the loss of Orthodox identity was expressed. In the western Ukraine, the priests see the source of this problem as the work of the Ukrainian Greek Catholic and Roman Catholic Churches, but in the eastern Ukraine, the priests see the source of this problem as the work of western missionaries and new religious movements.

In general, the persons who were interviewed tended to emphasize duties more than rights. They also insisted on the necessity to eliminate religious freedoms for religions that are nontraditional in Ukraine and to prohibit such religious groups that, in their opinion, are “sects” or “cults.” Approximately 70% of all who were interviewed think that the Ukrainian legal system is too liberal and does not contain mechanisms of protection against the so-called “totalitarian sects.” More than half of them think that it is necessary to reconsider the Ukrainian system of church-state relations.

### *E. Religious Intolerance*

The interreligion conflicts of the past now remain the principal source of religious intolerance in contemporary Ukraine. The struggle was accompanied by skirmishes both among the believers of different churches and between believers and militia detachments in a

number of populated localities in western Ukraine. In this region, the situation was particularly grave in 1989–1991. Afterward, a certain normalization process occurred (though the process was much slower than expected by the Ukrainian society).

The Ukrainian state explicitly manifested religious intolerance when former President Leonid Kravchuk rendered unilateral assistance to one of the churches in conflict—the Ukrainian Orthodox Church of the Kiev Patriarchate. The fact that most of the religious institutions have their centers outside of Ukraine is a particular concern for the newly established Ukrainian state, particularly for the former presidential administration of L. Kravchuk. Immediately following the declaration of Ukrainian independence, this administration took measures to block the influence of the Moscow Patriarchate, which from the perspective of national interests was viewed as the least desirable foreign religious center. The government, in turn, assisted the Ukrainian Orthodox Church in its desire to establish complete canonical independence. This attempt, however, was carried out in the absence of adequate political, canonical, and juridical expertise and without taking into account the given sociocultural and sociopsychological context. Many criticized this policy in fear that the policy might result in the foundation of an established church. President Leonid Kuchma, elected in 1994, recognized this policy to be wrong and one that contradicted the law and interests of Ukraine.

The simultaneous existence of several centers of religious influence in Ukraine does not allow any church to completely dominate and to suppress religious minorities, as happens quite often in a number of the post-Communist countries. Nevertheless, separate cases of intolerance manifested by the local authorities toward religious minorities in Ukraine were documented. One of the most well-known of these cases was the decision of the Chervonograd City Council in 1993 in the Lviv region to prohibit Jehovah's Witnesses activity on city territory. This decision was abolished by the public prosecutor of the Lviv region as unlawful.

#### *F. Politicization of Religious Life*

The next problem that has had a serious impact on church-state relations is the abnormal politicization of the churches. In Ukraine, where the national idea has not yet become the value common to all and where there is significant diversity in the cultural orientations of different regions, religious institutions occupy a special position. On

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the background of an undeveloped party system and weak trade-unions, the Ukrainian Orthodox Church exists as a deeply stratified structure, a reliable system of communication and well adjusted over the centuries, possessing the means of transplanting quite sophisticated ideas into the fabric of ordinary consciousness. These features make the Ukrainian Orthodox Church exceptionally attractive for persons and groups striving to acquire or preserve positions of power.

The representatives of the post-Communist elite view the Ukrainian Orthodox Church as a means of political or ethnic mobilization, as an instrument through which to legitimate their regime or to transmit certain ideas. Nearly no one looks at the Ukrainian Orthodox Church as what it should be: a specific spiritual phenomenon. This statement is not meant to be an accusation but simply a statement of objective reality. The Ukrainian Orthodox Church, on the other hand, is altering the social composition of the country in its own specific fashion, which is very different from the way that lay institutions approach this matter. Arnold Toynbee once wrote that the Ukrainian Orthodox Church accomplishes social transformation through the “spiritual progress of individual souls.”<sup>37</sup> Neither the government nor society at large is ready to accept the Ukrainian Orthodox Church in a role of moral arbitrator, or even a moral opponent, that steadfastly uncovers social disorders and causes considerable embarrassment for the powers that be.

At the same time, religion in Ukraine very largely functions as a means of political, cultural, and ethnic mobilization. We can speak about the presence of a quite definite correlation between a declaration of belonging to some particular Ukrainian Orthodox Church and political preference and behavior.

The 1994 parliamentary and presidential elections in Ukraine were particularly illustrative in this context. Given the fact that in Ukraine several religions are, in effect, competing with each other, these elections, indeed, helped create a situation in which the various churches are being transformed into parties.

And at last, the general problems of development of the post-Soviet societies—that is the legal nihilism of the population, the contradictions between the branches of authority, the corruption, and the attempts of the political elite to use churches as a tool for the re-

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37. 2 ARNOLD J. TOYNBEE, *A STUDY OF HISTORY* 80 (1957).

alization of their own projects—have appeared to be the most serious obstacle in the process of overcoming the Communist heritage in the sphere of church-state relations.

*G. The Ukrainian Government's Church Policy*

The Ukrainian government, *de jure*, has its own policy concerning religious organizations and the faithful. This policy, at the very least, was legalized in Article 30 of the Ukrainian Law, "On the Freedom of Conscience and Religious Organizations."<sup>38</sup> However, the precise meaning of this policy has yet to be determined. Moreover, it is still too early to speak about a single governmental policy in Ukraine. This policy, on the one hand, is a result of the way that larger issues are decided in the competition between various interested political forces and in the internecine struggles between competing governmental structures. On the other hand, the policy emerges in the struggle between the various religious institutions in their desire to place people into positions of power, which they find convenient. This policy constantly vacillates between trying to preserve a positive liberal image and secure guaranteed liberties, and the attempt to preserve the most dependable control of the state over religious organizations and to secure greater latitude and possibilities of influence over the church.

VI. THE LEGAL BASIS FOR CHURCH-STATE RELATIONS

In these conditions, Ukraine, however, has managed to achieve very essential successes in providing religious freedom. We should, evidently, agree with those researchers who consider the achievement in this area as the most serious of all the post-Communist changes in Ukraine.

*A. The 1991 Law: Main Provisions*

In April 1991, the Ukrainian parliament accepted the Law "On the Freedom of Conscience and Religious Organizations" ("1991 Law"), which mainly follows the stipulations of the Universal Declaration of Human Rights, the European Convention on Human Rights, as well as other European Conventions. In many aspects, the Ukrainian model of church-state relations turned out to be more

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38. UKR. CONST. ch. 2, art. 30 (1996).

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similar to the American model than to the European ones: the Ukrainian model includes the principle of church non-establishment, the strict separation of church from state and state from church, and the equality of all the religions before the law. Seri Ploky has argued that, even though Ukraine's geographic location would seem to dictate a European form of church-state relations, Ukraine's choice of the American version of church-state relations makes sense because Ukraine, like America, was established by colonization with an "advancing frontier" mentality. Thereto, the 1991 Law provides that when an international treaty, the signatory of which is Ukraine, establishes norms other than those which are stipulated by the Ukrainian legislation on freedom of conscience, then the norms of the international treaty apply. In accordance with Article 18, Paragraph 3 of the International Covenant on Civil and Political Rights ("ICCPR") as well as with Article 9, Paragraph 2 of the European Convention for Protection of Human Rights and Fundamental Freedoms, the 1991 Law introduces only those restrictions which are necessary to maintain public order and safety, lives, health, and morals as well as rights and freedoms of other citizens. At the same time, the Ukrainian law establishes a broader frame of religious liberty as compared with ICCPR Article 18, Paragraph 1. While ICCPR defines two meanings of the right of thought, conscience, and religion, namely the freedom to have or to adopt a religion or belief of his or her choice, and the freedom to manifest religion in different manners, then the 1991 Law introduces two more meanings of this freedom, namely, the rights to change religions or convictions and to expand not only religious but also atheistic convictions.

The Ukrainian legislation does not establish differences in the legal status of religious organizations of different confessions, does not create a division of the religious organizations on the basis of traditional and nontraditional ones, does not establish any trial period for a religious community to obtain the status of a legal entity, does not limit the right to create a religious organization to the citizens of Ukraine, and does not provide that only Ukrainian citizens can be leaders of churches.<sup>39</sup>

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39. However, the amendment enacted in 1993 does distinguish between the religious freedoms of citizens and foreigners. Foreign citizens who are temporarily in the Ukraine may preach or practice their religious activities "only in those religious organizations on whose invitations they came, and upon an official agreement with the state body which has registered the statute of the corresponding religious organization." Amended Ukrainian Act, HANDBOOK OF

At the same time, the Ukrainian legislation does differentiate between the legal status of religious organizations and the legal status of public organizations. Religious organizations are formed primarily to satisfy religious needs and to facilitate the expression of religious feelings. Religious organizations do not participate in the activity of political parties, do not conduct propaganda during election campaigns, and do not finance candidates of the bodies of state authority.<sup>40</sup> Article 5 of the 1991 Law obliges the state bodies to take into account the canonical structure of churches.

The state also has an obligation to overcome the negative church policy of the previous regime; the state has not accepted such an obligation with respect to the political parties. The state eliminated the problem of the legalization of religious organizations, recognizing them to be legal already on the basis of the mere fact of their creation (notice to the bodies of authority is not obligatory).

At the same time, as in many post-Communist countries, Ukrainian law is marked by the spirit of statism. The state appropriates for itself numerous functions unusual for democratic states. For instance, according to the law, the state should defend religious organizations' rights and interests that are legitimate and should encourage tolerance among both the religious and the atheist.

### *B. Registration System for Religious Organizations*

To receive legal entity status, the religious organization registers its charter. The registration of the charter automatically confers legal entity status on the religious organization. To register its charter, the religious community must have at least ten members. Religious communities must register at the regional office; religious centers, monasteries, theological schools, missions, and brotherhoods must register at the Ukrainian State Committee for Religious Affairs. The registration procedure is rather simple. The registration of a religious organization's charter, unlike the charters of political parties and public organizations, is performed free of charge.

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THE COUNCIL FOR RELIGIOUS AFFAIRS, art. 24 (1993); *see also* Tad Stahnke, *Proselytism and the Freedom to Change Religion in International Human Rights Law*, 1999 BYU L. REV. 251, 315.

40. *See* UKR. CONST. ch. 1, art. 5 (1996).

*C. Financial Condition of Religious Organizations*

The system of church-state relations in Ukraine separates the church and state in a rather strict manner. The state provides no financial subsidies—neither direct nor indirect—to religious organizations. However, the state considers itself to be obliged to compensate churches for the enormous damage that they suffered from 1917 to 1985. At the time of the Communist regime and during the Nazi invasion of Ukraine, approximately 14,500 church buildings were destroyed or used for non-religious purposes. Over the past five years, more than 3000 church buildings have been returned to religious organizations, and the government has authorized the return of 150 more buildings in response to pleas from churches. Nevertheless, only 65% of the religious communities of Ukraine presently have temples, mosques, synagogues, or prayer houses. For this reason, 3500 lots have been allocated, without charge, to religious organizations for the construction of church buildings. The government has extended this privilege not only to the traditional churches but also to religious organizations that have appeared in Ukraine in recent years.

*D. The Problem of Returning Church Property*

Nevertheless, the problem of returning property to churches remains one of the most difficult ones in church-state relations. First, the state has not been able to return more than 100 church buildings that are now used as museums, picture galleries, hospitals, schools, and other establishments of culture and education, which presently do not have other locations to which to move. Furthermore, problems arise where two or more religious communities, which were formally one religious community, claim rights in the same building. Local authorities have shown certain biases in handling such situations. During the last year, the courts have considered forty-four cases of religious organizations concerning the decisions of state bodies on property issues. In eighteen cases—that is, in more than 40% of the cases—the decisions of the local authorities were recognized to be invalid and the courts allowed the appeals of the religious organizations.

Finally, at the present time the state is only trying to solve the problem of returning buildings and property used for worship to the religious organizations. However, the Recommendation of the Par-



liament Assembly of the Council of Europe concerning the acceptance of Ukraine to the Council of Europe (1995) expresses the necessity of a legal solution to problems dealing with the return of all church property, not just that part of it which is used for worship purposes. A presidential decree provides favorable conditions for solution to this problem but preliminary work is only in its initial stage.<sup>41</sup>

*E. Attempts to Reconsider the New Ukrainian  
System of Church-State Relations*

At the beginning of the formation of the model for church-state relations in the independent Ukraine, opponents attempted to torpedo this model. The opponents of the existing model, which fully complies with the international legal acts to which Ukraine is a signatory, were fighting and are continuing to fight for the following positions:

1. Ukraine is not a country of emigrants; it has a millennial Christian tradition. An exceptional role in the formation of this tradition is attributed to Orthodoxy and Greek-Catholicism. Therefore, the Orthodox Church and Greek-Catholic Church have the right to receive a special status.

2. The historical churches of Ukraine were extremely weakened by the Communist regime; therefore, they are not capable of competing with the foreign religious institutions and missions, which are well organized and have powerful financial support. Thus, the historical churches have the right to receive legally established privileges.

3. A sharp increase in the number of religious organizations created by foreign missionaries may lead to a radical change in the religious map of Ukraine, resulting in a loss of Ukrainian originality.<sup>42</sup> Therefore, a reliable legislative barrier must be erected to the expansion of "foreign religions."

4. The religious situation in Ukraine has a very peculiar feature: the religious organizations have the highest rating of the people's

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41. Presidential Decree, *On Urgent Measures for Combating the Negative Consequences of Totalitarian Policies of the Former Soviet Union Regarding Religion and Restoration of the Violated Rights of Churches and Religious Organizations* (March 21, 2002).

42. See Stahnke, *supra* note 39, at 314.

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confidence. They have a real influence on the political behavior of citizens. Yet, the majority of the religious organizations have their church administrative centers beyond the borders of Ukraine. One of the biggest churches in Ukraine (38% of all the communities officially registered) is under the jurisdiction of Moscow Patriarchate, which has no sympathy to Ukrainian independence and statehood. Under these circumstances, the state must intervene actively into religious affairs, giving special support to those churches that are helping the Ukrainian people in establishing the young Ukrainian state in its national rebirth. Furthermore, the state must influence, in a proper way, those churches that do not take part in these processes.

5. In many European countries, there exist the established churches and distinctions in the status of religious organizations of different confessions. This fact does not prevent these countries from being members of the Council of Europe and from having an esteemed reputation on human rights and religious liberties.

The hierarchy of the historical churches is the group that is especially persistent in its efforts to impose restrictions and even prohibitions on the activity of foreign missionaries. In fact, one of the main goals of many church administrations has become the opposition to foreign missionaries and the appealing to the state machinery for help in this struggle with them.<sup>43</sup>

The arguments mentioned above seem to be reasonable if one does not take into consideration the country's political and cultural context as well as the level of Ukrainian officials' legal conscience. In the given conditions, only a direct prohibition against establishing any advantages or restrictions of one religion in relation to others can more or less effectively curb the discrimination against religious minorities.

The anticult movement, which demands special legislation for regulating the activity of new religious movements, strongly insists on making changes in the Ukrainian model of church-state relations. In contrast to the western anticult movement, this movement in Ukraine is not as strongly "institutionalized." However, the movement is based on the support (at least the moral support) of a significant part of the population and the church hierarchy. A wide spectrum of the political parties, from the left to the right, support this

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43. *See id.* at 313.

movement, as do some officials who hope to unite the historical churches on the basis “of the threats from the sects.”

The Amendment to Article 24 of the 1991 Law, adopted on December 23, 1993, is one of the most serious concessions to the forces striving to change the new Ukrainian model of church-state relations. This amendment was adopted one month after the attempt of “The White Brotherhood” to seize the Sophia Cathedral in Kiev and while a strong anticult wave existed in society. The public opinion was so highly excited that society showed practically no reaction to the obvious failure of this amendment to place any limitation on the misuse of religion to the detriment of the health and life of the citizens.

The Amendment to Article 24 of the 1991 Law stated:

Clergymen, preachers of religion, instructors (teachers) and other representatives of foreign organizations who are foreign citizens temporarily staying in Ukraine, may preach religious dogmas, perform religious rites and practice other canonic activities only in those religious organizations on whose invitations they came, and upon an official agreement with the state body which has registered the statute of the corresponding religious organization.<sup>44</sup>

It is evident that such an Amendment was in contradiction with the fundamental principles of the Ukrainian legislation on freedom of conscience. This amendment attracted severe criticism both in Ukraine and abroad.<sup>45</sup>

In a report on religious freedom, the U.S. State Department made the reasonable claim that the 1993 Amendment restricts the activities of non-native religious organizations and that, “[i]n addition, local officials have occasionally impeded the activities of foreign religious workers.”<sup>46</sup> Yet in 1994, after the amendment had been introduced, Ukraine remained the more favorable place of foreign mis-

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44. Amended Ukrainian Act, HANDBOOK OF THE COUNCIL FOR RELIGIOUS AFFAIRS, art. 24 (1993); see also Howard L. Biddulph, *Religious Liberty and the Ukrainian State: Nationalism Versus Equal Protection*, 1995 BYU L. REV. 321, 339 (quoting the 1993 Amendment to Article 24).

45. See COMMISSION ON SECURITY AND COOPERATION IN EUROPE, RELIGIOUS LIBERTY IN THE OSCE: PRESENT AND FUTURE 37–50 (1999) (briefing of the Commission on Security and Cooperation in Europe held Sept. 27, 1995); Biddulph, *supra* note 44, at 339–41.

46. U.S. DEP’T OF STATE, UNITED STATES POLICIES IN SUPPORT OF RELIGIOUS FREEDOM: FOCUS ON CHRISTIANS, at [http://www.state.gov/www/global/human\\_rights/970722\\_relig\\_rpt\\_christian.html](http://www.state.gov/www/global/human_rights/970722_relig_rpt_christian.html) (July 27, 1997).

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sionaries among all post-Communist countries.<sup>47</sup>

*F. The 1996 Ukrainian Constitution*

The discussions concerning the system of church-state relations also affected work on the Constitution of Ukraine, which was adopted in June 1996. Some political parties and movements, such as the Project of the Congress of Ukrainian Nationalists, submitted to the constitution's drafters a proposal for a cardinal revision of the system that already existed. Nevertheless, the Constitution states that "no religion can be recognized by the state as an obligatory religion."<sup>48</sup> The Constitution separates church and state as well as school and church. The Constitution asserts that the right to freedom of religion may be subject only to such limitations as are prescribed by law and are necessary to protect public order, health, morals, or the fundamental rights and freedoms of others.<sup>49</sup> In addition, the Constitution provides that the state will promote the development of ethnic, cultural, language, and religious originality of the national minorities.<sup>50</sup> Part 2 of Article 35 of the Ukrainian Constitution provides for substitution of mandatory military duty by an alternative service.<sup>51</sup>

Thus, the 1996 Constitution of Ukraine has consolidated the model of church-state relations that was formed on the basis of the 1991 Law.

## VII. CONCLUSION

In the course of recent years, a new system of church-state relations has been formed in Ukraine; this system complies with the international legal acts to which the Ukrainian state is a signatory. The gravest problems in church-state relations in Ukraine are the following: (a) the multilateral, interchurch conflict that makes the process of harmonizing relations between the churches and the state compli-

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47. In 1994, 1113 foreign Protestant missionaries worked in Ukraine, as compared with 505 in Russia, 213 in Hungary, 182 in Albania, 165 in Romania, 87 in Czech Republic, 77 in Bulgaria, 77 in Poland, 53 in Serbia, and 45 in Estonia. See East-West Church and Ministry Report 2, no. 1.

48. UKR. CONST. ch 2, art. 35 (1996).

49. *Id.*

50. *Id.* art. 1.

51. Law of Ukraine on Alternative Service (adopted May 1992).

cated; (b) the absence of carefully developed mechanisms for the realization of legislation on freedom of conscience (this absence is a consequence of the under development of the legal base in the Ukrainian state); and (c) the return of property taken from churches by the Soviet regime and the inefficient executive bodies that prevent the strict implementation of the law in this area.

The Constitution of 1996 has crystallized the existing system of church-state relations. However, there are quite powerful forces in Ukraine striving to revise the principles of this system. Russia's example will make, without fail, these forces more active in the near future.

The problems in the relations between the church and state cannot be solved separately from the many other social and political problems existing in Ukraine. The solution to these problems is closely connected with the strengthening of the civil society and with the overcoming of the Communist heritage and post-Communist pathologies.